PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional)
	ITL.0438US (P9450)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _March 28, 2006_ Signature ___	Application Number 09/703,162	Filed October 31, 2000
	First Named Inventor Benjamin M. Cahill, III	
Typed or printed name ___ Jennifer Juarez	Art Unit 2677	Examiner Abbas L. Abdulselam

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
　　　Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☑ attorney or agent of record.　42,117
Registration number ___

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 ___

___
Signature

Mark J. Rozman
___
Typed or printed name

512/418-9944
___
Telephone number

3/28/06
___
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☑ *Total of ___1___ forms are submitted.

O I P E
MAR 3 1 2006

Applicant:	Benjamin M. Cahill, III	§	Group Art Unit:	2677
		§		
Serial No.:	09/703,162	§		
		§	Examiner:	Abbas L. Abdulselam
Filed:	October 31, 2000	§		
		§		
For:	Analyzing Alpha Values	§	Atty. Dkt. No.:	ITL.0438US (P9450)
	For Flicker Filtering	§		

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW
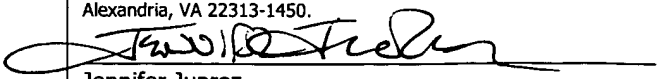
Sir:

Applicant seeks pre-appeal review of the rejection of claims 1-15 and 17-22. It is respectfully submitted that the rejection to pending claims 1-15 and 17-22 is clearly erroneous and the burden of an appeal should be avoided.

Pending independent claims 1, 10, and 17 stand rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,327,003 (Vos). The rejection is clearly erroneous as the cited reference nowhere teaches each and every element of these claims, in violation of well-established Patent Office policy. MPEP §2131. As to claim 1, nowhere does Vos teach either receipt of an alpha value indicative of how a video signal and a graphics signal are to be combined, or adjusting of a flicker filter based upon the alpha value. In this regard, the Examiner points to the components of FIG. 3 of Vos that merely show that an on screen display (OSD) generation interface 30 is connected to an on screen insertion interface 32 that also receives a video signal 36. Final Office Action mailed December 29, 2005, p. 2. However, nothing in Vos anywhere teaches receiving an alpha value.

Instead, as Vos teaches, the OSD provides information regarding an OSD header, a panel of colors and an address of a location in memory for the color: not an alpha value. Vos, col. 1, ln. 52 – col. 2, ln. 5; FIG. 1. Nowhere does Vos teach that either on screen display generation

interface 30 or any other portion of the system of Vos provides an alpha value, either to the on screen insertion interface 32 or anywhere else, as described more fully in Applicant's Reply to Final Office Action Mailed December 29, 2005, ("Applicant's Reply"), p. 2.

- Further, there is no teaching in Vos to adjust a flicker filter based upon such a (non-existent) alpha value. Instead, the mathematical filter disclosed in Vos is adapted to perform a particular equation and nowhere is it taught that this equation be adjusted, and it is certainly not adjusted based upon a non-existent alpha value, as described more fully in Applicant's Reply, pp. 2-3. Accordingly, the cited portions of Vos contended to meet the subject matter of claim 1 do not do so, and claims 1, 10, and 17 and their dependent claims are patentable.

Pending claims 2-9, 11-15 and 18-22 stand rejected under 35 U.S.C. § 103(a) over Vos in view of U.S. Patent No. 6,144,365 (Young). The rejection is clearly erroneous at least for the same reasons discussed above regarding claim 1 as "dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious." *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

Further, Young is not analogous art with respect to the claimed subject matter. MPEP §2141.01(a). In this regard, Young is in no way directed to the problem with which Applicant was faced, i.e., flicker filtering. In fact, Young nowhere even mentions the presence or use of such flicker filtering. Instead Young is directed to graphical display and generation of an image from multiple color samples, not separate video and graphics signals, as recited by claim 1.

Nor is there any motivation to combine the teaching of Vos, which is directed to on screen displays for a television, with the computer graphics system of Young. In this regard, the Examiner contends that it somehow would have been obvious "to modify Vos's flicker correction… to adapt Young's alpha test unit… because the use of alpha test unit helps function a blending process… ." Final Office Action, p. 5. However, this contention fails, as the Examiner fails to point to any motivation or suggestion with regard to either the claimed alpha value or adjustment of a flicker filter. As such, the Examiner engages in nothing more than improper hindsight rationale in an attempt to combine the references. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1316-17 (Fed Cir. 2000).

The rejection of claim 2 is further erroneous, as Young does not teach or suggest comparing an alpha value to a threshold value. In this regard, Young does not teach or suggest an alpha value that "indicates how a video signal and a graphics signal are to be combined" as

2

recited by claim 1. Instead, the alpha value of Young relates solely to graphics images and the blending of two graphics pixels as a foreground and background pixel. Young, 1:22-52. Further, the alleged comparison in Young of an alpha value to a threshold is not used in any manner to adjust a filter level of a flicker filter. Instead, Young merely teaches that such a comparison is performed to determine whether to reject a pixel without further processing. Young, 5:10-22.

Even if, as the Examiner contends, "alpha test unit (306) which compares the alpha value of a pixel to a threshold and outputs the result to 'Z compare unit' which in turn transfers its own output to alpha blending unit (310). ..." (Final Office Action, p. 5), this nowhere teaches adjustment of a flicker filter, and it certainly does not teach or suggest adjustment of a filter level of such a flicker filter in response to a comparison result. For this further reason that neither reference anywhere teaches or suggests adjustment of a flicker filter, nor such adjustment by adjusting a level of a flicker filter, the rejection of dependent claims 2-8, 12, 15, and 18-22 is clearly erroneous. Additional dependent claims are further patentable as described more fully in Applicant's Reply, pp. 4-5.

Since the rejection clearly violates existing PTO policy, the need for an appeal should be avoided.

Respectfully submitted,

Date: _____ March 28, 2006

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